



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

July 16, 1973

The Honorable Robert S. Calvert
Comptroller of Public Accounts
State Finance Building
Austin, Texas 78711

Opinion No. H- 65

Re: Whether certain notes
of the Harlingen National
Bank, which have a de-
finite maturity date and
a fixed interest rate,
should be considered a
part of the bank's capi-
tal and as such, be sub-
ject to an ad valorem
tax levy?

Dear Mr. Calvert:

Your request for our opinion states that on October 10, 1972, the Harlingen National Bank issued 7 and 1/2 % Subordinated Capital Notes to mature on October 10, 1982, with interest payable semi-annually. Your letter states that the U.S. Comptroller of the Currency considers the issue to be part of the capital structure of the bank. You ask our opinion as to whether these notes should be considered a part of the bank's capital and as such to be subject to an ad valorem levy.

Articles 7165 and 7166 govern the taxation of banks and the shares of stockholders. Neither calls for the bank to render its capital for taxation. However, shareholders of banks are required to render, at actual value, all shares of stock in the bank owned by them. "Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share in which its real estate is assessed." (Article 7166)

In Rosenburg v. Weekes, 4 S. W. 899 (1887), the Texas Supreme Court stated: "The value of a bank share depends upon the value of its franchise, capital, and property of all kinds less the amount of its debts."

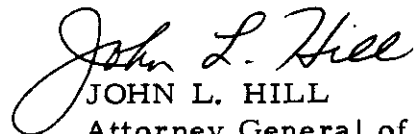
Despite its name, a subordinated capital note of a bank clearly is not a part of its capital. It is evidence of an indebtedness. The designation as capital notes, in all probability, arose from a long-standing tendency in the financial community to refer to concentrations of money as capital whether owned or not. Debt generally is recognized to be a less expensive method of funding a bank or business than is capital or equity. Capital notes are evidence of a debt, and not of capital itself.

In arriving at a determination of the fair cash market value of a bank's shares for the purpose of rendition by the shareholders, the note described should be treated as an indebtedness and not as part of capital.

SUMMARY

Subordinated Capital Notes of banks issued for a loan to the bank are not to be considered as part of the bank's capital for the purpose of determining the value of its shares. Instead they should be treated as an indebtedness of the bank.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee